

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

BAODING TIANWEI GROUP CO.,
LTD., a foreign entity,

Plaintiff,

v.

PACIFICORP, an Oregon
corporation,

Defendant.

No. CV 07-862-HU

OPINION AND
ORDER

PACIFICORP, an Oregon
corporation,

Third Party Plaintiff,

v.

WINBO INTERNATIONAL
CORPORATION, a California
corporation, and SUPER
POWER EQUIPMENT CO., a
California corporation,

Third Party Defendant.

SUPER POWER EQUIPMENT CO.,
WINBO INTERNATIONAL
CORPORATION,

Counterclaimants,

v.

OPINION AND ORDER Page 1

1 BAODING TIANWEI GROUP CO.,)
)
 2 Counter Defendant.)
)
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13 HUBEL, Magistrate Judge:

14 The matters before the court are the motion by Baoding Tianwei
 15 Group (Baoding) to lift the stay imposed by the court on September
 16 10, 2008 (doc. #109), pursuant to granting a motion by
 17 counterclaimants to compel arbitration, and the motion by Super
 18 Power Equipment (Super Power) under Rule 41(a)(2) of the Federal
 19 Rules of Civil Procedure to dismiss its claims against Baoding
 20 without prejudice (doc. #115).

21 **Procedural Background**

22 Baoding filed this action on June 11, 2007, against
 23 Pacificorp, alleging that Pacificorp had not paid in full for two
 24 electrical transformers purchased from Baoding and asserting claims
 25 for breach of contract. On October 19, 2007, the court granted
 26 Pacificorp's motion to join Winbo International Corporation (Winbo)

1 and Superpower Equipment Company (Super Power) as defendants (doc.
2 # 28). On March 14, 2008, Winbo and Super Power filed counterclaims
3 against Baoding for breach of contract, contribution, indemnity and
4 declaratory relief. (Doc. # 43). On the same day, Winbo and Super
5 Power filed a motion to stay and compel arbitration. (Doc. # 44).
6 On March 28, 2008, Pacificorp filed a motion for summary judgment.
7 (Doc. # 49). On April 10, 2008, while the motion to stay was
8 pending, Baoding filed a reply to Winbo and Superpower's answer and
9 counterclaims, but did not assert any claims against them, instead
10 reserving all such claims. (Doc. # 64).

11 In an Opinion and Order entered on September 10, 2008, the
12 court granted Pacificorp's motion for summary judgment, holding
13 that there was no issue of fact to be resolved and Pacificorp had
14 met its obligations to Baoding. (Doc. # 94). In the same Opinion
15 and Order, the court also granted Super Power's motion to stay the
16 action and compel arbitration, based on an agreement between
17 Baoding and Super Power to arbitrate the disputes between them by
18 referring such disputes to the Chinese International Economic and
19 Trade Arbitration Commission. Id. On December 4, 2008, the court
20 entered an order staying Super Power's claims against Baoding, the
21 only claims left in this case, pending arbitration (doc. #98).

22 Since entry of the Opinion and Order of September 10, 2008,
23 neither Baoding, nor Super Power has commenced arbitration
24 proceedings.

25 Discussion

26 Baoding now moves the court to lift the stay, on the ground
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1 that Super Power's failure to commence an arbitration proceeding
2 since entry of the stay constitutes a waiver of Super Power's right
3 to arbitrate any disputes with Baoding. Baoding asserts that unless
4 the stay is lifted, it will have no forum in which to assert claims
5 claims against Super Power for money allegedly due from Super
6 Power. Super Power has filed a motion to dismiss without prejudice
7 the counterclaims it brought against Baoding.

8 The court denies the motion to lift the stay (doc. # 109) at
9 this time, and denies Super Power's motion to dismiss its claims
10 against Baoding without prejudice (doc. # 115). Baoding, Winbo and
11 Super Power are ordered to refer all their disputes to the Chinese
12 International Economic and Trade Arbitration Commission for
13 arbitration within 30 days of the date of this order. If the
14 parties have not referred their dispute within that time, the court
15 will reconsider a renewed motion from Baoding to lift the stay, and
16 permit Baoding to file its proposed claims against Super Power, if
17 Baoding can explain to the court 1) why those proposed claims
18 should not be dismissed with prejudice for failure to prosecute,
19 and 2) why it should not be compelled to arbitrate those proposed
20 claims. The court will also, at that time, entertain a renewed
21 motion from Super Power to dismiss its counterclaims against
22 Baoding without prejudice, if Super Power can explain to the court
23 why those counterclaims should not be dismissed with prejudice for
24 failure to prosecute.

25 At the request of the parties, the court will order the
26 parties to attend a mandatory, in-person settlement conference with
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1 a judge of this court if the following conditions are satisfied:

- 2 1) within 30 days from entry of this order, each party must
3 file written confirmation that it will send at least one
4 of its officers or employees having full authority to
5 bind that entity to a settlement of all disputes between
6 Baoding, Winbo and Super Power;
- 7 2) the confirmation must state that the person attending can
8 settle for any amount of money without the need to call
9 others not in attendance; and
- 10 3) the confirmation must contain an agreement that the
11 conference can take place in Eugene or Portland.
- 12 4) If Winbo and Super Power do not intend to send separate
13 representatives, they must confirm that their
14 representative can bind both of them to a settlement.

15 IT IS SO ORDERED.

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17 Dated this 21st day of January, 2010.

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19 /s/ Dennis James Hubel

20 Dennis James Hubel
21 United States Magistrate Judge
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